89-945

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM 1989

WEDGE GROUP INCORPORATED
Petitioner,

v.

THIRD NATIONAL BANK IN NASHVILLE,
Respondent.

On Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a subrogation claim "arise out of" contacts that did not establish the underlying obligation for purposes of determining whether the due process clause authorizes the exercise of personal jurisdiction over a nonresident corporation?

2. Does a nonresident corporation's ownership of a resident subsidiary and exercise of its power to participate in the management of the subsidiary qualify as a "contact" adequate to confer personal jurisdiction over the nonresident?

II

PARTIES

The caption contains the names of all parties. WEDGE International Holdings, B.V., owns WEDGE Group Incorporated ("WEDGE"), petitioner. WEDGE owns a majority of the stock of Process Systems International, Inc., and a minority interest in The Rodgers Companies, Inc. WEDGE has no other direct subsidiaries or affiliates except for subsidiaries it wholly owns.

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OFFICIAL AND UNOFFICIAL REPORTS

The official reporter has not yet published the decision of the court of appeals. The Appendix contains that court's slip opinion, App. A, the district court's orders, App. D & E, and the magistrate's recommendation, App. C.

JURISDICTIONAL GROUNDS

The court of appeals issued and entered its judgment on August 16, 1989. App. A. That court also denied WEDGE's motion for rehearing on September 22, 1989. App. F. On October 31, 1989, the court of appeals stayed issuance of its mandate without specifying a time limit. App. G. WEDGE invokes this Court's jurisdiction pursuant to 28 U.S.C. § 2101(c) (1982).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULE

> *Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

> (a) Persons who are non-residents of Tennessee . . . are subject to the jurisdiction of the courts of this state as to any action or claims for relief arising from:
>
> * * *
>
> (6) Any basis not inconsistent with the Constitution of this state or of the United States.
>
> * * *
>
> (b) "Person" as used herein shall include corporations and all other entities which would be subject to service of process if present in this state.
>
> (c) Any such person shall be deemed to have submitted to the jurisdiction of this state who acts in the manner above described through an agent or personal representative.

Tenn. Code Ann. § 20-2-414 (1980).

> Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to such a party to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of the party's property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

Fed. R. Civ. P. 4(e).

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WEDGE Group Incorporated ("WEDGE"), petitioner, petitions as follows for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit:

STATEMENT OF THE CASE

In the second half of 1986, The Rodgers Companies, Inc. ("TRC") and various of its subsidiaries ("TRC group") apparently defaulted on a loan from Third Na-

tional Bank in Nashville, respondent.[1] App. H. ¶ 5; J ¶ 6; K ¶5 & L ¶ 4. Third National accelerated the debt. App. H ¶ 5; J ¶ 6; K ¶ 5 & L ¶ 4. On November 17, 1987, the bank filed this diversity[2] action against WEDGE to recover part of its loan. App. H. Third National grounded its claim on a security agreement between it and its debtors, alleging that the agreement gave it a subrogation right and entitled it to pursue collection of an account receivable it asserted WEDGE owed the debtors.

The account receivable claim related to a Tax Sharing Agreement that WEDGE, TRC, and five TRC subsidiaries had entered into effective October 1, 1980. App. H Ex. "D." The Tax Sharing Agreement obligated TRC to pay WEDGE an amount equal to the federal income tax liability TRC and the five subsidiaries would incur if they computed and reported earnings as a consolidated group. TRC agreed to make interim payments on that hypothetical basis during each tax year. At the time for filing a return, if TRC had paid more than the group's hypothetical tax liability for that tax year, WEDGE would refund the excess. Otherwise, TRC would pay WEDGE any deficiency. The parties agreed to the filing of returns for WEDGE, TRC, and the five subsidiaries as a consolidated group. They also agreed that Texas law would govern the agreement and negotiated and signed it in Texas.

Third National's claim against TRC arose out of the last two in a series of loan agreements. According to

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1. WEDGE does not necessarily agree with the factual assertions in Third National's affidavits and simply recites the assertions before the district court.

2. *See* 28 U.S.C. § 1332 (1982).

recitals in the Fourth Amendment to Loan Agreement, Third National entered into the original Loan Agreement as of May 7, 1982 and amended it as of January 20, 1983, July 11, 1983, and June 5, 1985. *Id.* Ex. "A." The Fourth Amendment took effect as of February 21, 1986 and the Fifth Amendment to Loan Agreement as of January 16, 1987. *Id.* Exs. "A" & "B." Third National alleged in this action that TRC owes it $6,150,082.36 plus interest and expenses and that its security interest in TRC's accounts receivable entitled it "to enforce TRC's rights under the Tax Sharing Agreement with WEDGE." *Id.* ¶ 5. It also alleged that "WEDGE owes $2,568,983 to TRC, and hence to Third National, under the Tax Sharing Agreement" and that Texas law authorized recovery of attorney fees from WEDGE. *Id.* ¶ 6.

WEDGE had little connection with Tennessee. A Delaware corporation, WEDGE maintained its principal place of business outside the state. *Id.* ¶ 1. It had never held title to property in Tennessee. App. I. It had not directly kept offices there. *Id.* It had no mailing address or phone listing within the state. *Id.* It had not directly retained Tennessee employees. *Id.*

Any contacts WEDGE did have stemmed from its ownership of TRC. WEDGE had owned most of TRC for about eight years, from 1978 until 1986, *id.*, and three WEDGE officers at various times had served as directors of either TRC or Rodgers Construction, Inc. ("RCI"), a TRC subsidiary, App. J ¶ 7. From 1980 to 1984, WEDGE officers met monthly in Nashville to discuss TRC and its subsidiaries with TRC and RCI management. *Id.* ¶ 8. The frequency of the meetings fell to three or four times a year in late 1984 or early 1985.

Id. ¶ 9. WEDGE and TRC asked Third National to continue extending credit to the TRC group in April and May 1985. App. L ¶ 5. Two officers of WEDGE negotiated with the bank in Nashville for an amendment to the original Loan Agreement. *Id.* WEDGE agreed to pay $7.5 million for additional TRC stock and deposited that amount in a Third National checking account for use in the TRC group's ordinary course of business. *Id.* ¶ 6. Only certain WEDGE officers, including a TRC director, could order disbursements from the account. *Id.* Third National entered into a Third Amendment to Loan Agreement with the TRC group as of June 5, 1985. *Id.* ¶ 5.

WEDGE's dealings with TRC lasted through mid-1986. Around the end of 1985, two WEDGE officers reviewed the accounts of TRC and RCI and set up a cash reporting system for them. *Id.* ¶ 13; App. K ¶ 6. A year later, when the TRC group experienced serious financial problems, TRC management started negotiating a purchase of WEDGE's TRC stock through a new corporation. App. J ¶ 14; K ¶ 7; L ¶ 9. WEDGE representatives traveled to Nashville and reviewed TRC's financial position to determine whether and at what price WEDGE should sell the stock. App. J ¶ 14; K ¶ 8. In February 1986, WEDGE and representatives of the prospective purchaser signed a letter agreement. App. J ¶ 15; K ¶ 9; L ¶ 10. Someone telecopied the letter agreement to Nashville, and Third National relied on it in agreeing to restructure the TRC group's debt. App. J ¶ 16; L ¶ 10. In March, during negotiation of a final stock purchase agreement, WEDGE suggested that the stock purchase agreement eliminate any obligations WEDGE might have to TRC under the Tax Sharing Agreement. App. J ¶ 18; L ¶ 11. In late May or early June, a WEDGE officer met in Nashville

with the prospective buyer's representatives and lawyers to talk about the stock purchase agreement. App. K ¶ 10. On June 4, the parties closed on the stock purchase agreement. App. J ¶ 21; K ¶ 10.

WEDGE had already executed the closing documents, and its Houston counsel delivered them to Nashville. App. J ¶ 20. The closing documents included an Agreement Relative to Accounts Receivable among WEDGE, TRC, and Third National. *Id.* The agreement recited that WEDGE denied any liability to TRC under the Tax Sharing Agreement. App. L Ex. "A." It also provided that Third National would forbear from seeking to collect on any such liability until one of five events occurred. *Id.*

WEDGE and TRC had observed all corporate formalities in conducting their respective businesses. App. I. No WEDGE officer or director had served as an officer of TRC. *Id.* TRC officers alone made day-to-day business decisions. *Id.* TRC had remained responsible for its relations with its customers, suppliers, legal counsel, banks, and public accountants. *Id.* WEDGE and TRC had kept separate bank accounts, used separate accounting and payroll systems, prepared separate budgets, and maintained separate financial records. *Id.* At all times, WEDGE and TRC constituted distinct corporate entities. *Id.*

WEDGE timely filed its motion to dismiss for lack of personal jurisdiction, and the district court referred the motion to a magistrate. On May 3, 1988, the magistrate submitted a report in which he recommended denial of the motion. App. C. The district court rejected the report and granted WEDGE's motion by order of June 1. App. D. Third National sought reconsideration, but the district court denied the motion on August 4. App. E. On August

22, the Sixth Circuit Court of Appeals dismissed an appeal that Third National had filed in the interim. 856 F.2d 196 (6th Cir. 1988). Third National renewed its appeal on September 1.

The Sixth Circuit reversed. The court considered "it apparent that WEDGE's contacts with Tennessee are not of a 'continuous and systematic' nature such that Tennessee could maintain personal jurisdiction over WEDGE in an action unrelated to its Tennessee conduct." App. A at ____. The court nonetheless concluded that "specific jurisdiction exists over WEDGE in Tennesee." *Id.* (following *Southern Machine Co., Inc. v. Mohasco Indus., Inc.*, 401 F.2d 374 (6th Cir. 1968)). In doing so, the court relied on the Tennessee long-arm statute, under which "Tennessee courts exercise personal jurisdiction 'to the full limit allowed by due process' " *Id.* at ____ (quoting *Masada Inv. Corp. v. Allen*, 697 S.W.2d 332, 334 (Tenn. 1985)). The only question the court decided "is whether the exercise of personal jurisdiction over WEDGE in Tennessee would violate due process." *Id.* at ____.

REASONS FOR ALLOWING THE WRIT

The Sixth Circuit erred in failing to hold that the due process clause prohibited the Tennessee district court from exercising personal jurisdiction over WEDGE. Third National's subrogation claim lacked the necessary connection to WEDGE's Tennessee contacts, and WEDGE's ownership and management of TRC did not constitute sufficient contacts with the state.

THE SIXTH CIRCUIT'S DECISION CONFLICTS WITH *KULKO v. CALIFORNIA SUPERIOR COURT*, 436 U.S. 84 (1978) AS WELL AS *HANSON v. DENCKLA*, 357 U.S. 235 (1958) AND PRESENTS AN IMPORTANT QUESTION THE COURT SHOULD RESOLVE DUE TO ITS SUBSTANTIAL IMPACT ON INTERSTATE AND INTERNATIONAL TRADE.

This case raises the question of what kind of connection must exist between a defendant's in-state activities and the plaintiff's claim before a court may constitutionally exercise personal jurisdiction over the defendant. The court below held that a "substantial connection" will do even if the claim does not "arise out of" the defendant's contacts with the state and that a claim arising out of a contract will suffice even if the contract has no substantial connection to the forum state. The Sixth Circuit's analysis runs counter to at least two of this Court's precedents. It also threatens to chill commerce with every company that pledges its accounts receivable to a lender.

The Sixth Circuit liberalized rather than applied the *International Shoe*[3] minimum contacts test as the Court elaborated it in *Kulko* and *Denckla*. The Court there determined that a contract does not establish minimum contacts unless it both has a substantial connection to the state of the forum and forms the basis for the plaintiff's claim (the claim "arises out of" the contract). The contract in *Denckla* failed the test because the trustee and settlor had executed the trust agreement outside the forum state, Florida, and because the claims arose from the agreement instead of its "republication" in Florida. *Denckla*, 357 U.S. at 252-53. Minimum contacts did

3. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

not exist in *Kulko* because the claim arose out of a contract, a separation agreement that the couple had negotiated and signed in New York, that had "virtually no connection with the forum State [of California]." *Kulko*, 436 U.S. at 97. In this case, the court below decided that Third National's subrogation claim "arose out of" the WEDGE-TRC Tax Sharing Agreement, which created no obligation to Third National and had almost no connection to Tennessee. In other words, a claim arises out of a contract (1) so long as another contract gives a third-party a right to enforce the first contract and (2) even if the first contract lacks any substantial connection to the forum state. The decision conflicts with at least *Denckla* and *Kulko*, and the Court should allow the writ to correct the Sixth Circuit's deviation from precedent.

The error resulted from application of a vague and overly broad standard. Relying on dicta in two footnotes of its 1968 *Southern Machine* decision, the court below determined that any "cause of action" need only *"have a substantial connection with* the defendant's in-state activities." App. A at ____ (quoting *Southern Machine*, 401 F.2d at 384 n.27) (emphasis added in original). That test combines two distinct parts of the minimum contacts analysis—the requirements of a purposeful contact and of a claim arising out of that contact. *See, e.g., Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (stating requirements for specific jurisdiction). The Sixth Circuit's legal error led it to conclude that

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4. *See also Asahi Metal Indus. Co. Ltd. v. California Superior Court*, 107 S. Ct. 1026 (1987); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984); *Rush v. Savchuk*, 444 U.S. 320 (1980); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

virtually any in-state conduct that has some relation to the claim establishes minimum contacts.

That the court below ignored the trend away from expansion of personal jurisdiction underscores the need for review. The minimum contacts test reached its outer limit in *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957), where the Court held that due process allowed a California court to exercise personal jurisdiction over a Texas insurance company where the plaintiff sued on a policy that had a "substantial connection" with California. *Denckla, Kulko,* and later cases have halted and reversed the growth. *See, e.g., Burger King,* 471 U.S. at 478 (stating that contract alone "clearly . . . cannot" establish minimum contacts).[4] Rather than acknowledging the trend, the Sixth Circuit followed its own 1968 decision in concluding that contracts provide minimum contacts if they either have a substantial connection with the forum state or constitute the basis of the lawsuit. App. A at ____ (citing *Southern Machine Co., Inc. v. Mohasco Indus., Inc.*, 401 F.2d 374 (6th Cir. 1968)). The regressive nature of the court's deviation increases the importance of review.

The Court has so far declined to specify the kind of connection *International Shoe* requires between the defendant's contacts and the plaintiff's claim. *McGee* held only that a "suit based on a contract which had a substantial connection with" the forum state satisfied due process. 355 U.S. at 223. In *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 n.10 (1984), the Court did not reach the question of "what sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination" that the

cause of action "arises out of" or "relates to" those contacts. This case presents an opportunity to clarify that *Kulko* and *Denckla* define the necessary connection.

Allowing the Sixth Circuit's opinion to stand could wreak havoc on interstate and international trade. Under that court's theory, a court may constitutionally command the appearance of any nonresident that happens to owe money to a resident whenever the latter has given a creditor a security interest in that account receivable and defaulted on the loan. Such a theory could subject purely local companies to the jurisdiction of states a continent away simply because they chose to deal with a national seller. Less dramatically, it could also force nonresident owners of a resident business to answer lawsuits in distant forums for no other reason than that they bought something from the business. Nothing in the Court's precedents would sanction such perverse results. *See, e.g., Denckla,* 375 U.S. at 253. ("The unilateral activity of those who claim some relation with a nonresident defendant cannot satisfy the requirement of contact with the forum State."). But, by holding that Third National's subrogation claim "arose out of" WEDGE's contacts with Tennessee, the Sixth Circuit has invited them.

THE DECISION BELOW CONFLICTS WITH DECISIONS OF OTHER FEDERAL COURTS OF APPEALS AND PRESENTS AN IMPORTANT FEDERAL LAW QUESTION THAT THE COURT SHOULD SETTLE.

A split in the Circuits has developed and persisted over the effect of *International Shoe* on the Court's decision in *Cannon Mfg. Co. v. Cudahy Packing Co.,* 267 U.S. 333 (1925). The *Cannon* Court held that a nonresident could own and direct the business of a resident

corporation without subjecting itself to the personal jurisdiction of local courts. The Sixth Circuit in this case determined that WEDGE's similar conduct qualified as purposeful "contacts" with Tennessee. App. A at ____ & n.1 (quoting *Velandra v. Regie Nationale des Usines Renault*, 336 F.2d 292, 297 (6th Cir. 1964)). Some federal courts of appeals share the Sixth Circuit's view, but others reject it. The conflict leaves business owners unsure of the extent to which participating in the management of their businesses may force them to defend against lawsuits in faraway courts and presents a significant issue that the Court ought to resolve.

The first group of cases, which the decision below represents, hold that a nonresident establishes a contact with the forum state by owning and directing the activities of a resident company. In this case, the Sixth Circuit treated as "contacts" with Tennessee WEDGE's ownership of TRC, the role of WEDGE officers as directors of TRC, meetings in Tennessee between WEDGE officers and TRC management to "review and direct" the subsidiary's operations, the 1980 Tax Sharing Agreement, the participation of WEDGE officers in negotiation of the Third Amendment to Loan Agreement between the TRC group and Third National, WEDGE's purchase of additional TRC stock and deposit of the purchase money in a Third National account, and the Agreement Relative to Accounts Receivable among WEDGE, TRC, and Third National. App. A at ____. Each of those "contacts" arose from WEDGE's ownership of TRC. The Sixth Circuit nonetheless considered each a basis for concluding that WEDGE had minimum contacts with Tennessee.

Two other Circuits arguably agree with the court below. In *Wells Fargo & Co. v. Wells Fargo Express Co.*,

556 F.2d 406, 415 (9th Cir. 1977), the court determined that a foreign parent's in-state negotiation and consummation of a loan to a resident subsidiary might satisfy the minimum contacts test if the claim arose from that conduct. The First Circuit likewise concluded that the existence of common directors, the foreign parent's sales to the local subsidiary, and its financial and managerial supervision of the subsidiary supported a finding of minimum contacts. *See Engine Specialties, Inc. v. Bombardier Ltd.*, 454 F.2d 527, 530 (1st Cir. 1972). That court also regarded as "relevant factors" the "interlocking ties of corporate control, such as common directors and officers. . . ." *Volkswagen Interamericana, S.A. v. Rohlsen*, 360 F.2d 437, 440 (1st Cir.), *cert. denied*, 385 U.S. 919 (1966); *see Mangual v. General Battery Corp.*, 710 F.2d 15, 21 (1st Cir. 1983) (citing *Rohlsen* for proposition that "close relationship between [parent and subsidiary] is a relevant factor"). In each case, the "contacts" on which the court relied involved nothing more than ownership and its normal incidents.

Other courts of appeals require considerably more before they will deem dealings between parent and subsidiary a "contact" of the parent with the state of the forum. The Fifth Circuit recently reiterated its "well-settled" rule that "where . . . a wholly owned subsidiary is operated as a distinct corporation, its contacts with the forum cannot be imputed to the parent." *Southmark Corp. v. Life Investors, Inc.*, 851 F.2d 763, 773-74 (5th Cir. 1988) (footnote omitted).[5] In *Harris v. Deere &*

5. For earlier Fifth Circuit cases stating the rule, see *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 372-73 (5th Cir. 1987); *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1160 (5th Cir. 1983); *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 492-93 (5th Cir. 1974).

Co., 223 F.2d 161, 162 (4th Cir. 1955) (per curiam), the court held that *Cannon* "precluded" it from considering the in-state "activities" of a subsidiary in assessing the parent's minimum contacts. In *Blount v. Peerless Chems. (P.R.) Inc.*, 316 F.2d 695, 698-700 (2d Cir.), *cert. denied*, 375 U.S. 831 (1963), the court refused to attribute a parent's contacts to a nonresident subsidiary despite the facts that the same person served as president and a director of both, that he resided in the forum state, and that the subsidiary bought products from and through the parent. Rather than treating ownership and the normal relations resulting from it as "contacts," those courts have considered them irrelevant to the minimum contacts analysis.

A distinction between general and specific jurisdiction does not resolve the conflict. Under both aspects of the minimum contacts test, ownership does or does not qualify as a jurisdictional contact. *Compare Burger King*, 471 U.S. at 472-73 (discussing contacts necessary to establish specific jurisdiction), *with Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-17 (1984) (same for general jurisdiction). Specific jurisdiction analysis simply adds a requirement that the defendant "purposefully" make or cause the contact. *See, e.g., Burger King*, 471 U.S. at 472 (citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). An act that courts do not consider a "contact" under the less demanding general jurisdiction standard cannot at the same time constitute a "purposeful contact" under the test for specific jurisdiction.

The Sixth Circuit erred in treating WEDGE's ownership of TRC and involvement in its management as contacts with Tennessee. The First and Ninth Circuits

share that error. The decisions by other courts of appeals supply the correct rule: Dealings solely between a parent and subsidiary corporation amount to contacts only if the entities constitute alter egos of one another or one acts as agent for the other. *See, e.g., Southmark Corp.*, 851 F.2d at 773-74 & 774 n.18 (alter ego); *Minnesota Mining & Mfg. Co. v. Eco Chem, Inc.*, 757 F.2d 1256, 1265 (Fed. Cir. 1985) (alter ego); *Volkswagenwerk Aktiengesellschaft v. Beech Aircraft Corp.*, 751 F.2d 117, 120-22 (2d Cir. 1984) (alter ego); *Pesaplastic, C.A. v. Cincinnati Milacron Co.*, 750 F.2d 1516, 1521-23 (11th Cir. 1985) (agency); *I.A.M. Nat'l Pension Fund v. Wakefield Indus., Inc.*, 699 F.2d 1254, 1258-59 (D.C. Cir. 1983) (agency and alter ego); *Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Management, Inc.*, 519 F.2d 634, 637-38 (8th Cir. 1975) (alter ego); *Curtis Publishing Co. v. Cassel*, 302 F.2d 132, 137-38 (10th Cir. 1962) (agency).

The Court has not addressed the question since deciding *International Shoe* but has adverted to it. In *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 108 S. Ct. 2104, 2111 n.** (1988), the Court noted its holdings in *Cannon* and *Consolidated Textile Co. v. Gregory*, 289 U.S. 85, 88 (1933), that "the activities of a subsidiary are not necessarily enough to render a parent subject to a court's jurisdiction, for service of process or otherwise." The Court stated in *Keeton* that "jurisdiction over a parent corporation [does not] automatically establish jurisdiction over a wholly owned subsidiary." 465 U.S. at 781 n.13 (citing *Consolidated Textile*, 289 U.S. at 88, and *Peterson v. Chicago, R.I. & P.R. Co.*, 205 U.S. 364, 391 (1907)). *Compare National Carbide Corp. v. Commissioner*, 336 U.S. 422, 438 n.21 (1949) (citing *Cannon* and *Peterson* for proposition that parent "as owner of the subsidiary

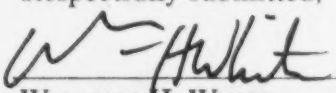
was not" subject to service of process through subsidiary). The issue remains one for the Court to decide.

The importance of the issue to consistency among the Circuits and commerce warrants the Court's intervention to resolve the conflict. Subsidiaries account for a substantial part of interstate and international trade. Subjecting nonresident shareholders to personal jurisdiction wherever jurisdiction exists over their companies can only deter investment and hinder commerce. The Court has noted that the due process clause "allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297 (1980). Permitting courts to deem stock ownership and the owner's normal dealings directly with the company as jurisdictional contacts would destroy the predictability that the due process clause assures.

CONCLUSION

WEDGE respectfully requests that the Court grant its petition and issue a writ of certiorari to review the decision of the Sixth Circuit.

Respectfully submitted,



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CERTIFICATE OF MAILING AND SERVICE

As a member of the bar of this Court, I certify that to my personal knowledge the appropriate number of copies of this Petition for Writ of Certiorari were deposited in a United States post office, with first-class postage prepaid, and properly addressed to the Clerk of this Court and counsel of record for Third National Bank in Nashville, respondent, on this 30th day of November, 1989 and within the time permitted for filing the Petition.

WILLIAM H. WHITE

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public, on this 30th day of November, 1989, to certify which witness my hand and official seal.

Notary Public, in and for the
State of T E X A S

Louise A. Burke
(Print Name of Notary Here)

My Commission Expires: 2/3/90